



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Jacob K. Javits Federal Building
26 Federal Plaza, 37th Floor
New York, New York 10278*

March 17, 2024

BY ECF

The Honorable Sidney H. Stein
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

**Re: *United States v. Robert Menendez, et. al,*
S4 23 Cr. 490 (SHS)**

Dear Judge Stein:

The Government respectfully writes to request that the Court hold a hearing, pursuant to *United States v. Curcio*, 680 F.2d 881 (2d Cir. 1982), with respect to David Schertler, Esq., and other members of his law firm, who are counsel to defendant Nadine Menendez, in the above-captioned matter, and encloses a proposed colloquy, on behalf of both the Government for the Court's consideration.

As discussed at the March 11, 2024 arraignment and conference, Nadine Menendez's current counsel have personal knowledge of certain facts relevant to this matter. *See, e.g.*, Indictment ¶¶ 70, 71, 73. Such knowledge raises two related, but distinct concerns: first, that the Government at trial may seek to call Mr. Schertler and/or enter into evidence materials or elicit testimony from other witnesses regarding events with which Mr. Schertler was involved, and second, that Mr. Schertler (and his co-counsel) may be limited in their ability to make certain arguments to the Court or the jury at trial, irrespective of whether their client, Nadine Menendez, wishes them to make these arguments. Although the Court need not resolve the question now, the first of these issues could present an "unsworn witness" issue regarding Mr. Schertler. *See, e.g.*, *United States v. Locascio*, 6 F.3d 924, 933-34 (2d Cir. 1993); *United States v. Kerik*, 531 F. Supp. 2d 610, 614-16 (S.D.N.Y. 2008). The Government believes that the second of these issues is waivable by the defendant. *See, e.g.*, *United States v. Perez*, 325 F.3d 115, 125-27 (2d Cir. 2003).

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Accordingly, the Government requests that the Court promptly hold a *Curcio* hearing to ensure that Nadine Menendez understands and knowingly waives the multiple issues arising from her continued retention of Mr. Schertler and his law firm.

We understand that counsel for Nadine Menendez do not consent to the Government's proposal for conducting the *Curcio* hearing and that they plan to file a response.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By: s/ Eli J. Mark
Eli J. Mark
Paul M. Monteleoni
Daniel C. Richenthal
Lara Pomerantz
Assistant United States Attorneys
(212) 637-2431/2219/2109/2243

Enclosure

cc: (by ECF)

Counsel of Record